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ABSTRACT

Professional bargaining in higher education is examined in terms of the labor contract as a legal document, the unsuitability of contracts to deal with qualitative questions, and the strength of the union. It is argued that a labor contract forces two parties into a buyer and seller arrangement: product accountability or quality of education must be stipulated, and this is difficult to build into a labor contract. The two largest concerns of the contract are pay and job security, which can be addressed with committees for peer review, criteria and due process procedures, percentages entitled to promotion, and seniority ranks. Bargaining does not simplify the procedure and may possibly over proceduralize the contract requirements and detract attention to the process rather than the substance. Labor contracting is a legal construction of the minimum acceptable performance and usually in terms of time. Anything beyond that basic expectation is a bonus. In the academic community, scholarship is not based on time-defined criteria: time is a labor measure, not a professional quality determinant. It is suggested that attempts to define, proceduralize, and quantify the activities of higher education faculty have no basis for validity. A union is seen as only as strong as its weakest link, with the individual becoming part of the whole. Contracts cannot sort out, promote, and provide incentive to super star faculty. Some contracts have "good teaching" awards, but reward is a fringe benefit. It is concluded that virtually no data exist that compare faculties from collective units versus nonorganized units; the real implications of collective bargaining for higher education need to be studied. (CC)

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# COLLECTIVE BARGAINING IN HIGHER EDUCATION: THE REAL ISSUES

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"Collective Bargaining in Higher Education: The Real Issues"

Continuing concern over the effect of collective bargaining on higher education and the limits to which it may be taken suggest that some of the issues directly involved, yet rarely debated, be surfaced for discussion. The following sequence of facts, as we view them, relate to the underlying reality that surrounds professional negotiations in general and in some cases those particular to higher education. These statements delve into issues that are emotion charged which produce much rhetoric that obfuscates them as soon as they are mentioned. They should be considered legitimately without all side show posturing done by both sides in the negotiations game.

FACTS:

A. A collective bargaining agreement is a labor contract.

Don't be fooled with impressive sounding language and statements of rights and responsibilities. Faculty-management contracts draw decision making lines that cannot blurr. If the responsibility for decision making in a contract was truly shared by both parties, conflict resolution could be a continuous process. A bargaining agreement between two parties forces a buyer and seller situation to be present. Labor is labor. Sold, bought and paid for through a contract which stipulates the manner in which it will be delivered. In business contracts management must try to maintain quality and keep costs low to make a profit and stay in business. Product accountability comes in the market-place. John Silber and others have openly stated that this analogy only applies to private sector institutions because there is no product accountability for public institutions. The state subsidizes the whole operation. There is no balanced budget for public institutions he contends.

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Labor contracts function without any direct relation to quality. The contract concept is neutral. Educational management has attempted to address quality as part of the labor contract. Cirteria that determine quality of performance for professionals vary from profession to profession; however, one thing is consistent among them, professional time spent on any single professional act has only a tangential relation to the quality of the performance. Labor contracts buy and sell time. It is a mistake to infer that qualitative guarantees can be built into labor contracts as a result of the concept that more equals better, as in the case of aspirin, it does not apply. Yet this ironic assumption has prevailed in professional negotiations since their beginning.

B. Contracts establish negotiated routines that sometime lose sight of their original purpose.

The two largest areas of routine and process that occupy contract space normally concern pay and job security. Committees for peer review, extensive lists of criteria and hordes of due process procedures have been written and implemented. Some contracts have established percentages entitled to promotion on an annual basis and divided those eligible into seniority categories. Some contracts have eliminated rank entirely in favor of seniority. All contracts address the problems of pay and security, but in a variety of ways.

The danger in over proceduralized contract requirements to police personnel is the attention paid to the process rather than substance. It may be a simple point of view, however, it would appear the more committees and reviews necessary to render a decision the more the decision becomes perfunctory in nature. Promotion comes as a matter of time. Tenure, except in very few cases, is granted routinely. Neither side is the contract is very happy with these outcomes. This is another instance

of the general unsuitability of contracts to deal with matters that revolve on qualitative questions. On paper they appear able to do so, in practice the case is quite strained. Unions came into existance to protect their own. Always remember a labor contract carries an inherent basic quality with it that is not lost in procedural language.

C. Contracts are legal documents.

Legal documents which have fixed procedures carry certain assumptions into contract administrating that are not stated in contract language. One of the most significant is the continuous assertion of the advisorial relationship between the two parties of the contract. What jokingly is referred to in the military as "guard house lawyer mentality" may begin as soon as the terms of a contract are agreed to. The condition is naturally unavoidable when dealing with legally separate units. It is an understandable situation given the logical context of labor management relations. The issue here is to stop kidding ourselves that professional contracts are any different from other labor contracts. Faculty time is being bargained for in a legally enforceable manner. The minimum limits in the contract will eventually be tested in some manner by somebody in the bargaining unit. And for many colleges, over a period of time, the minimum time expectations and commitments stated in the contract will become the institution's norm.

These things should be expected as a natural consequence of collective procedure. There should be no finger pointing or cries of unprofessional behavior brought forth to shame the faculty unit. It is naive to expect other behavior. Labor contracting is legal construction of minimum acceptable performance. Anything beyond that basic expectation is a bonus.

In the academic community scholarship is not done based on time defined criteria. Professional services, only in the most strained sense,

have anything to do with time as prerequisite for quality performance. Time is a labor measure not a professional quality determinent. Attempts to define, proceduralize, and quantify the activities of higher education faculty has been an endeavor which has no empirical basis for validity. This phenomena is not limited to collective bargaining faculties, other procedure bound institutions suffer equally, but the detail of contract language only serves to magnify some of the absurdities of the effort.

D. A union is only as strong as its weakest link.

One of the givens in collective bargaining is the obligation of whole to the individual member. The trade that occurs when the collective is formed should never become lost in concept; it permeates the application and administration of a contract in all respects. The individual becomes part of, and to an extent loses the ability to divorce from, the conditions determined by the whole. Protestations to the contrary should be examined in the light of actual enforcement of the contract. Which end of the spectrum occupies the vast majority of administration time? Are they issues that effect super star faculty or are they cases dealing with concerns revolving around some minimum provisions to insure equality between faculty? I have never seen a contract that was concerned with provisions to sort out, promote and provide incentive to super star faculty. True some contracts have "good teaching" awards and other incentitives available but they are not the heart of the contract, they are more like a fringe benefit and many times are handed out as such.

The four issues of fact surrounding collective bargaining and higher education just presented are not intended to startle or cause alarm for those not familiar with collective bargaining in higher education. The intent is to draw attention to the actual issues involved in collective

agreements. The whole concept of bargaining for time and what realistic relationship that has with professional performance needs to be discussed openly. Using Harvard faculty workloads, in time translations, as bargaining models or promotion publishing criteria as symbols of faculty quality just doesn't have a logical parallel in all higher education institutions. The real problems here are that these issues have rarely been debated. Contracts lock instructional models into place and cause fundamental questions about higher education and its changing students to be put on the shelf; meanwhile endless haggle takes place over details without a questioning look at the basic formula. What is the relationship between faculty time and instructional quality? We don't know. Do collective agreements mute the self critical capacity of the faculty? Is that bad or good? Does the lowest common denominator philosophy associated with unionism have a negative impact on classroom teaching? We don't know. In fact the one thing we do know is that virtually no data exists that compares results from different types of faculties (collective units vs non-organized units).

We don't know much about higher education outcomes period. We do know that gradutes from elite institutions score higher on standardized outcomes measures than graduates from non-elite schools. But does that logically imply that non-elite schools should try to imitate elite school faculty organization, workload and reward system? The assumption obviously has been yes if the comparision is made between the desires of higher education faculty and the elite institutions model. They are practically the same. Every place is a little Harvard in the mind of its faculty. It is time to stop pretending higher education is the same in all institutions and that faculty conditions ought to be similar. The discussion and debate on what the real implications collective bargaining has for higher

education needs to be undertaken.

Silber might be right, maybe organized faculties present such a monolity that school administrations cannot deal with them meaningfully. If so, we are closer to statewide higher education salary schedules and working rules than anyone is willing to admit. But at least we should contront this possibility realistically and not dismiss it by silence.